

CHAPTER 3 RULE MAKING

[Prior to 10/8/86, Commerce Commission[250]]

199—3.1(17A,474) Purpose and scope.

3.1(1) *In general.* These rules shall govern the practice and procedure in all rule-making proceedings of the Iowa utilities board (board).

3.1(2) *Rules of construction.* If any provision of a rule or the application of a rule to any person or circumstance is itself or through its enabling statute held invalid, the invalidity does not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end the provisions of the rule are severable.

3.1(3) *Waiver.* The board may waive the application of any of these rules pursuant to 199 IAC 1.3(17A,474).

3.1(4) *Forms and filing requirements.* All rule-making filings shall substantially comply with the forms prescribed in 199 IAC 2.2(17A,474). All filings shall include an original and ten copies.

199—3.2(17A,474) Notice of inquiry. In addition to seeking information by other methods, the board may solicit comments from the public on the subject matter of possible rule making by the board by causing notice of the subject matter to be published in the Iowa Administrative Bulletin, indicating where, when, and how persons may comment.

199—3.3(17A,474) Petition for adoption of rules. Any interested person may petition the board for the adoption, amendment, or repeal of a rule.

199—3.4(17A,474) Commencement of proceedings.

3.4(1) *Commenced by order.* Rule-making proceedings shall be commenced only upon written order of the board. The board may commence a rule-making proceeding by order upon its own motion or upon the filing of a petition for rule making by any interested person.

3.4(2) *Board action on petition.* Within 60 days after the filing of a petition for rule making, the board shall either deny the petition by written order on the merits, stating the reasons therefor, commence by written order a rule-making proceeding, or adopt by written order a rule pursuant to Iowa Code section 17A.4(2).

3.4(3) *Notice of rule making.* Upon the commencement by written order of a rule-making proceeding, the board shall cause the required notice of the proceeding to be published in the Iowa Administrative Bulletin.

3.4(4) *Fiscal impact statement.* Pursuant to Iowa Code section 25B.6, a proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions, or agencies and entities which contract with political subdivisions to provide services, shall be accompanied by a fiscal impact statement outlining the costs associated with the proposed rule. If the board determines at the time it adopts a rule that the earlier fiscal impact statement contains errors or that a fiscal impact statement should have been prepared but was not, the board will issue a corrected or delayed fiscal impact statement.

199—3.5(17A,474) Written statements of position.

3.5(1) *Persons.* Any interested person may file a written statement of position containing data, views, comments, or arguments concerning the proposed adoption, amendment, or repeal of a rule.

3.5(2) *Service.* Written statements of position shall be served by the author upon the petitioner, if any, and consumer advocate at the time of filing.

199—3.6(17A,474) Counterstatements of position.

3.6(1) *Petitioner.* The petitioner, if any, may file a counterstatement of position with the board in response to written statements of position.

3.6(2) *Filing.* Counterstatements of position, if any, shall be filed with the board prior to the oral presentation or, if no oral presentation is scheduled, not later than 15 calendar days after the petitioner's receipt of the written statement of position to which the petitioner is responding.

3.6(3) *Service.* Counterstatements of position shall be served by the petitioner at the time of filing upon the authors of written statements of position to which the petitioner is responding and to consumer advocate.

199—3.7(17A,474) Requests for oral presentation. If an oral presentation is not scheduled by the board on its own motion, any interested person may file a request for an oral presentation.

3.7(1) *Filing.* The time period, as directed by the board, for filing of requests for oral presentation shall be not less than 20 calendar days after the publication of the notice of rule making in the Iowa Administrative Bulletin.

3.7(2) *Action on proper request.* Within 15 calendar days of the filing of a request for oral presentation, the board shall determine if the request is in accordance with Iowa Code section 17A.4. If the board determines that the request complies with section 17A.4, the board shall by written order schedule oral presentation on the rule making and shall cause a notice of the oral presentation to be published in the Iowa Administrative Bulletin. The notice shall state the date, time and place of the oral presentation and shall briefly describe the subject matter of the rule-making proceeding. The oral presentation on the rule making shall be not less than ten calendar days after the publication of the notice. The board shall serve a similar notice on the party requesting oral presentation, on any other persons filing written comments, and on the petitioner, if any.

3.7(3) *Action on improper request.* If the board determines that a request for oral presentation does not comply with Iowa Code section 17A.4, it may by written order deny such request stating the reasons therefor, or it may, in its discretion, grant the request and schedule an oral presentation.

199—3.8(17A,474) Rule-making oral presentation.

3.8(1) *Written appearance.* Any interested person may participate in rule-making oral presentations in person or by counsel. A written appearance may be filed not less than five calendar days prior to oral presentation.

3.8(2) *Oral presentations.* Participants in rule-making oral presentations may submit exhibits and present oral statements of position which may include data, views, comments, or arguments concerning the proposed adoption, amendment, or repeal of the rule. Participants shall not be required to take an oath and shall not be subject to cross-examination. The board may, in its discretion, permit the questioning of participants by any interested person, but no participant shall be required to answer any question.

3.8(3) *Rebuttal and limitations.* The board may, in its discretion, permit rebuttal statements of position and request the filing of written statements of position subsequent to the adjournment of the rule-making oral presentation. The board may limit the time of any oral presentation and the length of any written presentation.

199—3.9(17A,474) Rule-making decisions.

3.9(1) *Adoption, amendment, or repeal.* The board shall by written order adopt, amend, or repeal the rule pursuant to the rule-making proceeding, or dismiss the proceeding in accordance with Iowa Code section 17A.4. The written order shall include a preamble to the adopted rules explaining the principal reasons for the action taken and, if applicable, a brief explanation of any decision not to permit waiver of the adopted rules. The board may, by order, specify the effective date of the adoption, amendment, or repeal of the rule.

3.9(2) *Variance between adopted rule and proposed rule.* The board may adopt a rule that differs from the rule proposed in the Notice of Intended Action in the following situations:

- a.* The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in the Notice;
- b.* The differences are a logical outgrowth of the contents of the Notice and the comments submitted in response thereto;
- c.* The Notice indicated that the outcome of the rule making could be the rule in question;
- d.* The differences are so insubstantial as to make additional notice and comment proceedings unnecessary; or
- e.* As otherwise permitted by law.

3.9(3) *Statements.* Upon the adoption, amendment, or repeal of a rule or termination of a rule-making proceeding, and if timely written request is filed by any interested person pursuant to Iowa Code section 17A.4(1) “*b*,” the board shall, within 35 days of the request, issue a formal written statement of the principal reasons for and against the adoption, amendment, or repeal of the rule, or termination of the rule-making proceeding, including the reasons why the board overruled the positions in opposition to the board’s decision.

199—3.10(17A,474) Regulatory analysis.

3.10(1) *Regulatory analysis.* The board shall issue a regulatory analysis of a proposed rule, or of a rule adopted without prior notice and opportunity for public participation, when required by 1998 Iowa Acts, chapter 1202, section 10.

3.10(2) *Request for regulatory analysis.* A request for a regulatory analysis shall be in writing and shall specify the proposed rule or adopted rule for which the analysis is requested.

3.10(3) *Schedule extended.* Upon receipt of a timely written request for a regulatory analysis of a proposed rule, the time periods for filing written comments and for requesting an oral proceeding are extended to a date 20 days after publication of a concise summary of the regulatory analysis in the Iowa Administrative Bulletin. Any oral proceeding that may already have been scheduled will be rescheduled by the board to a date at least 20 days after publication of the summary.

199—3.11(17A,474) Review of rules. Pursuant to Iowa Code section 17A.7, upon receipt from the administrative rules coordinator of a request for formal review of a specified rule, the board will determine whether the rule has been reviewed within the preceding five years. If such a review was conducted, the board will report that fact to the administrative rules coordinator. If no such review has been conducted, the board will consider whether the rule should be repealed or amended or a new rule adopted in its place. The board will prepare a written report summarizing its findings, supporting reasons, and proposed course of action. Copies of the report will be sent to the administrative rules review committee and the administrative rules coordinator, and will be made available for public inspection.

These rules are intended to implement Iowa Code section 476.2.

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